

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000455-001 DT

03/08/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

T RICHARDS TRUCKING LLC

STANLEY M HAMMERMAN

v.

MKP TRANSPORT INC (001)

DONALD O LOEB

REMAND DESK-LCA-CCC
TOLLESON JUSTICE COURT

RECORD APPEAL RULE / REMAND

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on January 12, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. I have considered and reviewed the record of the proceedings from the trial court, exhibits made of record, the memoranda and supplemental memoranda submitted.

In the case at hand, Appellee, T. Richards Trucking, L.L.C., brought a subrogation claim against Appellant, MKP Transport, INC., for monies (damages) Appellee paid to third-party consignees concerning flowers shipped in Appellant's trucks. Appellee claims the flowers were frozen and destroyed during transport on Appellant's trucks. On February 4, 2003, the Tolleson Justice Court entered a judgment for Appellee in both the subrogation claim and Appellant's counterclaim for transportation charges. Appellant brings the matter before this court.

The only issue to be addressed is whether the Carmack Amendment¹ and the applicable bills of lading govern the contract of carriage between the parties. Congress enacted the

¹ Amended to the Interstate Commerce Act in 1906. The Carmack Amendment was originally found in 49 USCA §20(11). However, those provisions were later removed and renumbered. Portions of the Amendment (relevant to this case) can now be found in 49 USCA 14706 (liability of carriers under Docket Code 512

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Carmack Amendment to eliminate the burden on interstate commerce, which resulted from inconsistent state laws governing the rights and obligations of shippers and carriers in interstate transportation.² The purpose of Carmack Amendment is to enable interstate carriers to assess their risks and predict their potential liability for damages.³ Appellant correctly argues that the Carmack Amendment exclusively governs an interstate motor carrier's liability for loss, damage or delay in the delivery of goods moving across state lines under an interstate bill of lading. The Amendment states, in pertinent part, as follows:

A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission ... shall issue a receipt or bill of lading for property it receives from transportation under this subtitle. That carrier ... and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission ... are liable to the person entitled to recover under the bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property ...[emphasis added].

Further, by the Carmack Amendment, Congress legislated directly upon the carrier's liability for loss of and damage to interstate shipments, and this and other federal legislation on the subject of interstate commerce is supreme and exclusive, and supersedes all state laws.⁴

In order to state a claim under the Carmack Amendment to the Interstate Commerce Act, a pleading must allege: (1) receipt of the goods by the defendant carrier in good order and condition; (2) the shipment's arrival at its destination in a damaged condition or its failure to arrive at all; and (3) the amount of the loss.⁵ No evidence appears in the record supporting claims that Appellant received the flowers in good order and condition, nor is there evidence that the flowers were delivered to the consignee's (Nurseryman's Exchange) Mesa, AZ warehouse in damaged (frozen) condition. In fact, the evidence before the trial court establishes that there were no notations on the bills of lading claiming damage to the flowers. It is entirely possible

receipts of bills of lading).

² *Taylor v. Mayflower Transit, Inc.*, 22 F.Supp.2d 509, 510, W.D.N.C. (1998) ("The Carmack Amendment defined the parameters of carrier liability for loss and damage to goods transported under interstate bills of lading.").

³ *Suarez v. United Van Lines, Inc.*, 791 F.Supp. 815, D.Colo. (1992).

⁴ *Adams Express Co. v. Croninger*, 33 S.Ct. 148, 226 U.S. 491, 57 L.Ed. 314 (1913); See also *Chicago & N.W. Ry. Co. v. C. C. Whitnack Produce Co.*, 42 S.Ct. 328, 258 U.S. 369, 66 L.Ed. 665 (1922); *New York Cent. & H.R.R. Co. v. Beaham*, 37 S.Ct. 43, 242 U.S. 148, 61 L.Ed. 210 (1916); *Atchison, etc., R. Co. v. Harold*, 36 S.Ct. 665, 241 U.S. 371, 60 L.Ed. 1050 (1916); *Boston, etc., R. Co. v. Hooker*, 34 S.Ct. 526, 233 U.S. 97, 58 L.Ed. 868 (1914); *Kansas City Southern R. Co. v. Carl*, 33 S.Ct. 391, 227 U.S. 639, 57 L.Ed. 683 (1913); *Chicago, etc., R. Co. v. Latta*, 33 S.Ct. 155, 226 U.S. 519, 57 L.Ed. 328 (1913).

⁵ 49 U.S.C.A. § 14706; *Taylor v. Mayflower Transit, Inc.*, supra.; *Missouri Pacific R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 84 S.Ct. 1142, 12 L.Ed.2d 194 (1964).

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that the flowers were frozen in transit during the secondary distribution by R.P. Steinmetz to the ultimate consignees, grocers A.J.'s, Basha's and Fry's.

Even if Appellee had properly filed a claim under the Carmack Amendment, the bills of lading, which govern the contract of carriage between the parties,⁶ would have proved fatal to Appellee's cause of action. A shipper who is required by the bill of lading to make a written claim of damage within a specified time cannot recover damages if a written claim is not filed.⁷ Each of Appellant's bills of lading stated the following:

No complaint will be accepted unless noted on carrier's delivery receipt or made within 24 hours from receipt of merchandise.

Neither the third-party consignees, nor Appellee, made notations concerning the damaged flowers on the delivery receipts, or filed complaints within 24 hours of delivery of the flowers. Hence, Appellee failed to comply with the terms of the bills of lading. After a careful examination of the record and federal law, I find that the Carmack Amendment and the applicable bills of lading govern the contract of carriage between the parties, and that Appellee did not comply with the legal requirements of either.

For the reasons explained in this opinion, I must conclude that the trial court erred as a matter of law in entering judgment for Appellee on the complaint and the counter-claim.

IT IS THEREFORE ORDERED reversing the decision and judgment of the Tolleson Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Tolleson Justice Court with directions to enter judgment for Appellant on the complaint and its counterclaim, and for all further, if any, and future proceedings, with the exception of attorneys fees and costs incurred in this appeal.

IT IS FURTHER ORDERED that counsel for the Appellant shall lodge a judgment consistent with this minute entry opinion and include a provision for attorneys fees and costs by April 20, 2004. Counsel may submit its application for attorneys fees and costs by april 20, 2004.

/ s / HONORABLE MICHAEL D. JONES

⁶ *Elgharbawi v. Selly*, 483 N.W.2d 490, 493 (Minn.App. 1992); *Arizona Feeds v. Southern Pac. Transp. Co.*, 21 Ariz.App. 346, 519 P.2d 199 (App. 1974).

⁷ *Culver v. Boat Transit, Inc.*, 782 F.2d 1467, 9th Cir.(Or.) (1986).

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JUDICIAL OFFICER OF THE SUPERIOR COURT